

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A 1975 CHEVROLET CAPRICE,
VEHICLE IDENTIFICATION
NUMBER 1N39U5J120323,

Defendant.

CV 23-111-M-DLC

ORDER

Before the Court is the United States' Motion for Entry of Judgment and Order of Forfeiture pursuant to Fed. R. Civ. P. 55(b)(2). (Doc. 13.) Upon considering the pleadings filed herein, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 26, 2023, the United States instituted a judicial forfeiture action by filing a Verified Complaint *in Rem* against the Defendant vehicle, a 1975 Chevrolet Caprice, VIN: 1N39U5J120323, to forfeit property under 21 U.S.C. § 881(a)(4)(6), asserting that (1) the Defendant Vehicle was used to transport and/or facilitate the transportation of illegal controlled substances, and/or (2) the Defendant Vehicle and/or its improvements and upgrades were

purchased through the funds or proceeds obtained from the sale of illegal controlled substances. (Doc. 1 ¶ 14).

2. On September 28, 2023, the U.S. Marshal Service executed the Warrant of Arrest *in Rem* (Doc. 4) that was issued by this Court on September 28, 2023, and arrested the Defendant vehicle. (Doc. 5.)

3. On December 5, 2023, the United States provided “actual notice” of this civil asset forfeiture action by mailing the Notice of Complaint for Forfeiture *in Rem* (Doc. 2) and Verified Complaint *in Rem* (Doc. 1) to Omar Hassan and his attorney, Andy Nelson, via first class U.S. mail and Certified mail, to the addresses provided in the administrative claim as well as the addresses provided by law enforcement. (*See* Doc. 11-1, 11-2.)

4. Notice of this forfeiture action was also provided to known and unknown potential claimants by publishing on the government’s asset forfeiture website the Notice of Forfeiture Action for 30 consecutive days, beginning on September 28, 2023, and ending on October 27, 2023. The “Notice of Forfeiture Action” provides in pertinent part as follows:

Any person claiming a legal interest in the Defendant Property must file a verified Claim with the court within 60 days from the first day of publication (September 28, 2023) of this Notice on this official government internet web site and an Answer to the complaint or motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days thereafter.

(Doc. 6-1 at 1.)

5. Upon considering the United States' Motion for Entry of Default of Known Potential Claimants (Doc. 10) and Declaration in Support of the Motion (Doc. 11), the Clerk of District Court entered the default of Omar Hassan, on January 18, 2024, for failure to timely file a verified claim and/or to answer or otherwise defend as required by the Supplemental Rules. (Doc. 12).

6. Upon considering the United States' Motion for Entry of Default of Unknown Potential Claimants, (Doc. 7) and Declaration in Support of the Motion (Doc. 8), the Clerk of District Court entered the default of unknown potential claimants, on December 12, 2023, for failure to timely file a verified claim and/or to answer or otherwise defend as required by the Supplemental Rules. (Doc. 9).

7. The factual allegations set forth in paragraphs 1 through 16 of the Verified Complaint for Forfeiture *in Rem* are verified by Missoula Drug Task Case Force Officer, Rebecca Birket. (Doc. 1 at 8.)

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§1345 and 1355. The United States has filed a Verified Complaint for Forfeiture *in Rem* to forfeit the Defendant Vehicle under 21 U.S.C. § 881(a)(4)(6), as a vehicle used to transport and/or facilitate the transportation of illegal controlled substances and/or its improvements and upgrades were purchased through the funds of

proceeds obtained from the sale of illegal controlled substances in violation of 21 U.S.C. § 841, *et seq.*

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1335 and 1335, because the acts or omissions giving rise to the forfeiture occurred in and around the District of Montana, and the Defendant Vehicle is located in this District.

3. Civil forfeitures are governed by the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure. *United States v. 2659 Roundhill Drive*, 283 F.3d 1146, 1149 n.2 (9th Cir. 2002).

4. The Verified Complaint for Forfeiture *in Rem* sets forth detailed facts to support a reasonable belief that the United States will be able to meet its burden of proof at trial as required by Supplemental Rule G(2)(f), to support probable cause, and to provide proof by a preponderance of the evidence to seize and arrest the Defendant Vehicle described in the Verified Complaint. The facts contained in the Verified Complaint support the institution of these forfeiture proceedings for a knowing and willful violations of 21 U.S.C. §§ 841 et seq., and subject to forfeiture under 21 U.S.C. § 881(a)(4)(6).

5. The totality of circumstances as set forth in the Verified Complaint *in Rem*, demonstrates that there is a substantial connection that the Defendant Vehicle

was furnished or intended to be furnished in exchange for a controlled substance, and/or was used or intended to be used to facilitate one or more violations of 21 U.S.C. § 841, et seq.

6. Notice of this action was properly provided to known potential claimant, Omar Hassan, and his attorney, Andrew Nelson, by providing “actual notice” by mailing the Verified Complaint *in Rem*, in accordance with Supplemental Rule G(4)(b)(v).

7. Notice by publication was also provided to known and unknown potential claimants in accordance with Supplemental Rule (G)(4)(a)(iv)(C).

8. In accordance with Fed. R. Civ. P. 55(a) and Supplemental Rules A(2) and G(5), the Clerk of District Court properly entered the defaults of any unknown potential claimants and known potential claimant, Omar Hassan. (Docs. 9 and 12).

9. Pursuant to Fed. R. Civ. P. 55(b)(2), the United States is entitled to a judgment of default against the Defendant Vehicle.

10. The United States is further entitled to an order of forfeiture of the Defendant Vehicle.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The United States is granted judgment against the Defendant Vehicle, a 1975 Chevrolet Caprice, VIN: 1N39U5J120323, and against any person asserting

a claim to, or interest in, the Defendant Vehicle.

2. The 1975 Chevrolet Caprice, VIN: 1N39U5J120323, is hereby forfeited to the United States and shall be disposed of in accordance with the law.
DATED this 12th day of February, 2024.



Dana L. Christensen, District Judge
United States District Court